

Remarks

Claims 1-55, 57-71, 73-77, 81-105, 109-113 and 116-125 are pending in the application. Claims 56, 72-80, 106-108 and 114-115 are canceled without prejudice or disclaimer thereto. Claims 81-86, 88-95, 105, 109, 113 and 116-124 have been amended for various reasons, including clarification of the subject matter recited therein and correction of claim dependencies in view of claim cancellations. Regarding Claim 105, support for this amendment can be found throughout the specification such as on page 8, lines 6-11. Reconsideration, a withdrawal of all rejections, and a Notice of Allowability are respectfully requested.

A Supplemental Information Disclosure Statement is filed herewith, along with an accompanying PTO Form-1449 listing various references.

Claim 56 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Office Action alleges that Claim 56 includes new matter since it calls for one or more desiccants to be impregnated into one or more heat seal layers, which, the Office Action states, is not disclosed in the parent application, i.e., Serial No. 09/599,746. Without addressing the merits of the rejection, Claim 56 has been canceled without prejudice or disclaimer for the purposes of expediting prosecution.

Claims 72, 78-80, 106-108 and 114-115 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of Claims 1, 4-6, 12-14 and 18-19 respectively of prior U.S. Patent No. 6,179,118. Without addressing the merits of this rejection, Claims 72, 78-80, 106-108 and 114-115 has been canceled without prejudice or disclaimer for the purposes of expediting prosecution.

Claim 105 is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,645,073 to Homan ("Homan"). The Office Action alleges that

Homan includes a container which holds a drug. The container is enclosed in a moisture impermeable pouch/bag. The Office Action concludes that the container of Homan is considered as being equivalent to the containing means as recited in Claim 105, and therefore, the Office Action alleges, Homan anticipates Claim 105.

Applicants respectfully traverse this rejection. It is submitted that Claim 105 is not anticipated by Homan. In accordance with MPEP 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applying this test, it is clear that Homan does not disclose each and every element as set forth in Claim 105. Accordingly, Homan does not anticipate the claimed invention.

Homan discloses an entirely different system than now recited in Claim 105. More specifically, Homan discloses packaging of materials which enable a user to mix a diluent with the materials and then fill a syringe with the solution. As set forth in col. 3, lines 15-21, the package includes a vial and a bag enclosing the entire vial so as to provide exterior sealed containment for the vial. Homan further discloses in this same passage that the vial includes a glass container. Applicants' invention as recited in Claim 105 is directed to an entirely different system. More specifically, Applicants employ a can comprising metal. Such a structure is utilized as a Metered Dose Inhaler can capable of accommodating high pressures attributable to the propellant present therein. Homan does teach nor remotely suggest the use of a can in the manner set forth in Claim 105.

In summary, and in accordance with MPEP 2131, Holman does not anticipate Claim 105 since it does not expressly or inherently set forth all elements recited therein. A withdrawal of the rejection under 35 U.S.C. § 102(b) is therefore respectfully solicited.

Claims 1, 3, 11-13, 19, 22-28, 30-43, 53-55, 60-61, 63-67, 70-71 and 105 are rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1, 3-4, 6-7, 10-12 and 14-16 of U.S. Patent No. 6,315,112 ("'112 patent"). Although Applicant believes Claims 1, 3, 11-13, 19, 22-28, 30-43, 53-55, 60-61, 63-67, 70-71 and 105 to be patentably distinct from the above-referenced claims of the '112 patent, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 14-18 and 20-21 are rejected under the judicially created doctrine of obviousness-type double patenting over Claims 4-5, 8-9 and 17 of the '112 patent in view of European Patent Application No. 0 428 380 to Wass. Although Applicant believes Claims 14-18 and 20-21 are patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 44-52 are rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '112 patent in view of U.S. Patent No. 5,522,385 to Lloyd et al. ("Lloyd"). Although Applicant believes Claims 44-52 are patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 73-77, 81, 89, 93, 105, 109-113, 116 and 124-125 are rejected under the judicially created doctrine of obviousness-type double patenting over Claims 2-3, 5, 7, 12, 18, 20 and 25 of U.S. Patent No. 6,179,118 ("'118 patent"). Although Applicant believes Claims 73-77, 81, 89, 93, 105, 109-113, 116 and 124-125 to be patentably distinct from the above-referenced claims of the '118 patent, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 90-92 are rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '118 patent in view of European Patent Application No. 0 428 380 to Wass. Although Applicant believes Claims 90-92 are patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 94 is rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '118 patent in view of U.S. Patent No. 4,815,602 to Schirmer ("Schirmer"). Although Applicant believes Claim 94 is patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 95 is rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '118 patent in view of U.S. Patent No. 4,664,256 to Halskov ("Halskov"). Although Applicant believes Claim 95 is patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 96-104 are rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '118 patent in view of Lloyd. Although Applicant believes Claims 96-104 are patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 72-80, 90-93, 105-115 and 125 are rejected under the judicially created doctrine of obviousness-type double patenting over Claims 2-3, 5, 7, 12, 18, 20 and 25 of U.S. Patent No. 6,119,853 ("'853 patent"). Although Applicant believes Claims 72-80, 90-93, 105-115 and 125 are patentably distinct from the

'853 patent, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 94 is rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '853 patent in view of Schirmer. Although Applicant believes Claim 94 is patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 95 is rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '853 patent in view of Halskov.

Although Applicant believes Claim 95 is patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claims 96-104 are rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of the '853 patent in view of Lloyd. Although Applicant believes Claims 96-104 are patentably distinct from the above references applied in combination, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 105 is rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of U.S. Patent No. 6,390,291 ("'291 patent"). Although Applicant believes Claim 105 is patentably distinct from the '291 patent, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 105 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claim 26 of copending Application No. 10/071,674 ("'674 application"). Although Applicant believes Claim 105 is patentably distinct from the '674 application, a Terminal Disclaimer is filed

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herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

Claim 105 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1 of copending Application No. 09/599,274 ("274 application"). Although Applicant believes Claim 105 is patentably distinct from the '274 application, a Terminal Disclaimer is filed herewith for the purposes of expediting prosecution. A withdrawal of this rejection is therefore respectfully solicited.

The points of the Office Action being addressed in full, a Notice of Allowability is respectfully solicited.

Respectfully submitted,

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